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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 389

THE KNOX NATIONAL FARM LOAN ASSOCIATION, A CORPORATION, AND THE FEDERAL LAND BANK OF LOUISVILLE, A CORPORATION,

Petitioners,

vs.

ARTHUR C. PHILLIPS.

BRIEF OF RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KNOX COUNTY, OHIO.

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Respondent.

BRIEF OF RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KNOX COUNTY, OHIO.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Reasons for Denying the Writ.

Among the reasons which will occur to the Court for the denial of the writ prayed for by this petition, we direct especial attention to the following:

1. Every question that calls for consideration in this case has been passed upon by the several courts of the State of Ohio, beginning with the court of original jurisdiction,

the Court of Common Pleas of Knox County, Ohio, next the Court of Appeals, and finally, upon motion to certify the record of said Court of Appeals, by the Supreme Court of the State of Ohio.

2. These courts had complete and final jurisdiction of the parties and the subject matter of the case, upon every question that could be properly presented.

3. In each of the courts of the State of Ohio above mentioned, the decision was in favor of the respondent, and there is absolutely nothing about these decisions that is in conflict with Federal law, or the decisions of Federal courts.

4. The decision of these Ohio courts involved the construction and application of Ohio statutes to the instant case, including the finding that this action primarily incorporated a suit to quiet title, and that the facts and jurisdiction of the Court justified and permitted the appointment of a receiver for The Knox National Farm Loan Association. These decisions are within the powers of said States courts, and Federal courts are bound thereby.

5. If we concede and adopt the claims of petitioners as now made in their Brief filed herein, the only matters left in this litigation for review or consideration, if this writ were granted, would be a judgment rendered against the petitioner, The Knox National Farm Loan Association and in favor of Arthur C. Phillips for $265.00, and the order appointing a receiver of this confessedly insolvent debtor.

Therefore, the rendition of this judgment, and the appointment of a receiver, under the facts and circumstances disclosed by the record, is entirely within the powers of the State courts, that have already passed upon the questions involved, and Federal courts are bound thereby.

6. The judgment rendered in favor of the respondent in the instant case was awarded on account of the provisions of a written contract between The Knox National Farm Loan Association and the said respondent. Since the affairs of this insolvent corporation are to be liquidated and wound up, this judgment does *not* thereby accord him a "preference over other creditors" of the concern.

7. At no time heretofore in the progress of this litigation has the claim been presented by the petitioner, or considered by the several courts reviewing the matter, that there was error by these courts "in failing to recognize that all controversy relative to title had been eliminated upon respondent's payment of the entire mortgage debt during the interim between the filing of suit and the appointment of a receiver to liquidate the Association."

8. While the Federal Farm Loan Act provides one method for the liquidation and winding up of the affairs of a National Farm Loan Association, there is absolutely no provision that this method is *exclusive*. There is nothing in the provisions of the Federal Farm Loan Act that precludes or prevents the appointment by a State court of competent jurisdiction, and under proper facts and authority of law, of a receiver of an insolvent National Farm Loan Association, for the purpose of liquidating and winding up its affairs.

Argument and Supporting Authorities.

We believe that it may be assumed that this Court will not be inclined to grant the prayer of this petition, and issue the writ asked for, without some compelling reason.

Considering the comparatively small sum involved, there is manifest injustice in our client being dragged from one court to another, at considerable expense, time and effort,

in order to protect and preserve his rights, and this small judgment, from the onslaughts of these petitioners who are apparently willing and able to spend extravagant sums in fees and costs in their efforts to defeat his claim.

If we are right, this sort of thing should not go another step further, and the writ should not be allowed.

The legal proposition to the effect that the U. S. Supreme Court and Federal courts generally, are bound by decisions of State courts applying and construing State laws and State decisions has been so frequently and definitely decided by Federal courts that it is probably unnecessary to cite authority on the subject. But we ask the Court's indulgence, on account of our interest in our client's cause, and it may be put down to an excess of zeal.

Upon the legal propositions involved in the foregoing Reasons for Denying the Writ, Nos. 1 to 5, inclusive, we cite the following:

North Laramie Land Company v. *Hoffman*, 268 U. S. 276, 45 Sup. Ct. Rep. 491;

Central Union Telephone Company v. *City of Edwardsville*, 269 U. S. 190, 46 Sup. Ct. Rep. 90;

Live Oak Water Users Association v. *Railroad Commission of State of California*, 269 U. S. 354, 46 Sup. Ct. Rep. 149.

Referring to Reason No. 6, above set forth, we call attention to the fact that the evidence shows (R. 56, and Exhibit A), that respondent held the written agreement of The Knox National Farm Loan Association to apply $265.00 to the payment of his mortgage loan when and if he paid the balance. There was a simple contract to be enforced, and it was not even necessary for the State courts to consider, apply or construe the provisions of the Federal law pertaining to Farm Loan Associations. Therefore, it does

not appear that any Federal question was expressly or necessarily decided.

In support, we cite:

Whitney v. *People of State of California*, 274 U. S. 357, 47 Sup. Ct. Rep. 64;

Mellon v. *O'Neil*, 275 U. S. 212, 48 Sup. Ct. Rep. 62.

We submit, that the State courts had a right to consider respondent a simple contract creditor of an insolvent corporation, and as such he might sue for the appointment of a receiver.

See *Brown* v. *Cuba-American Jockey & Auto Club*, 2 F. (2d) 612.

If the foregoing decision is followed, we also submit that respondent had a right as a creditor and as a minority stockholder of the petitioner The Knox National Farm Loan Association to the appointment of a receiver for the liquidating and winding up of the affairs of that concern. Of course in the end, its assets would only be applied as far as they may go in satisfying all legal claims against the concern, including the judgment in favor of respondent.

As to the above mentioned Reason No. 7, we submit that petitioners are wrong in the "Specification of Error", No. 4, mentioned in their Brief, because the Court of Appeals of Knox County, Ohio, and the Supreme Court of Ohio had a right to consider that the entire controversy became subject to review under the petition in error, filed in said Court of Appeals (R. 104-105-106). As we view it, this petition in error carried up for review in the Court of Appeals, both the judgment of the Common Pleas Court of October 7, 1935 (R. 93-94-95), as well as the finding and order of November 18, 1935 (R. 96-97-98-99-100-101). However, we assert that this point was never raised heretofore in connection with claims asserted on behalf of these peti-

tioners, and therefore ought not to be considered on a petition for writ of certiorari to U. S. Supreme Court. See *Bothwell* v. *Bricklee-Nears Co.*, 275 U. S. 274, 48 Sup. Ct. Rep. 124.

Referring to Reason No. 8 for denying the writ, we observe that this covers one matter that both these petitioners have continually asserted, and have relied upon, in attempting to reverse the decisions of the Ohio courts in this matter. They have asserted that the provisions of the Federal Farm Loan Act confer *exclusive* jurisdiction upon the Farm Credit Administration to liquidate and wind up the affairs of an insolvent National Farm Loan Association. We strenuously dispute this claim, and submit that while the provisions of this law provide *one* method, there is no statement, or even inference, that the method is *exclusive*. An examination of the provisions of this law will at once indicate that the method is cumbersome and uncertain, and would be of little use or avail to the respondent in this case, assuming that his judgment is legal and proper. We believe that this whole question, of whether or not the method provided by the Federal Farm Loan Act, is *exclusive*, as far as the legal proposition is concerned, is fully covered by the recent decision of this Court in the case of the *United States* v. *Bank of New York and Trust Company*, 296 U. S. 463, 56 Sup. Ct. Rep. 343. The 5th syllabus of the case is as follows:

> "Grant of jurisdiction to one Court does not of itself imply that the jurisdiction is to be exclusive." (56 Sup. Ct. Rep. 343.)

The opinion in this case is by Chief Justice Hughes and on page 348, 56th Supreme Court Reporter, the opinion says:

> "The fact that the complainant in these suits is the United States does not justify a departure from the

rule which would otherwise be applicable. The government invokes and confers jurisdiction upon the District Court to entertain all suits of a civil nature brought by the United States. The government insists that the United States is entitled to have its claim determined in its own courts. But the grant of jurisdiction to the District Court in suits brought by the United States does not purport to confer exclusive jurisdiction. It is a general rule that the grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive."

Answering the Brief of Petitioners.

We are not disposed to pass unnoticed the disposition indicated by the petitioners in an endeavor to assert facts that are not in the Record of this case, and certainly were never proven herein. We, therefore, submit in closing, that we have no knowledge of the truth of the statements made in petitioner's Brief in the two paragraphs following Sub-paragraph (d) of Paragraph 4 of their "Reasons for Granting the Writ", as set forth therein, particularly including the foot note designated by a star (*), and therefore deny, and object to, these assertions.

Conclusion.

WHEREFORE respondent prays that the petition filed herein for writ of certiorari be denied, and that the respondent may have all proper relief.

Respectfully submitted,

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